



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0053
4 GREENWAY COURT LLC

Petitioner, 4 Greenway Court LLC, applied to the Building Commissioner for permission to convert the structure from six residential units to seven residential units and a management office by adding one garden level basement unit and a separate office at 4 Greenway Court. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed October 2, 2014 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on September 11, 2014 and September 18, 2014 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**4 GREENWAY CT – ADD BASEMENT UNIT in an M-2.0, Apartment House, residential district, on
October 2, 2014, at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: 4 GREENWAY CT LLC; Owner: 4 GREENWAY COURT LLC)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.05: Conversion.**
- 2. Section 5.09.2.d: Design Review, multiple dwellings.**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations.**
- 4. Section 5.50: Front Yard Requirements.**
- 5. Section 5.60: Side Yard Requirements.**
- 6. Section 5.70: Rear Yard Requirements**
- 7. Section 6.01.2a: General Regulations Applying to Off-Street Parking Facilities.**
- 8. Section 6.02: Paragraph 1: Table of Off-Street Parking Space Requirements.**
- 9. Section 6.04.5.b: Design of All Off Street Parking Facilities**
- 10. Section 6.04.3: Design of all Off Street Parking Facilities**
- 11. Section 6.04.7: Design of all Off-Street Parking Facilities**
- 12. Section 8.02.2: Alteration or Extension (Structure).**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

***Jesse Geller, Chair
Christopher Hussey
Jonathan Book***

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller, and Board Members Jonathan Book and Christopher Hussey. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Also in attendance was David King, the project architect.

Chairman Jesse Geller called the hearing to order at 7:00 p.m. Chairman Geller disclosed that he and Attorney Gladstone sit on a common Board together.

Attorney Gladstone presented to the Board a background of the property, stating as follows: The Property was constructed in 1924 in a Georgian Revival style and is part of a larger group of five connected residential structures located around a central courtyard that fronts onto Green Street. Significantly, each building stands on its own lot within a constellation of lots, creating the impression of a single lot with a unified structure. The other structures in the development are 10-12 Greenway (with which the Property shares a party wall) and 9 Greenway Court and 3 Greenway Court, both of which are on the opposite side of a greenway courtyard from the Property. The Property's main entrance opens to the courtyard, with a secondary entrance at the rear of the building facing the driveway that runs past the Osaka Restaurant. The Property currently contains 6 residential units (as do the buildings at 10-12 Greenway Court), 5 of which contain 3 bedrooms and 1 of which contains 2 bedrooms. Abutting the rear of the combined Greenway Court site is the Babcock Street public parking area, and across the street is the John Street public parking area. The site is located one block from Harvard Street and is separated from the Osaka Restaurant by a right-of-way driveway.

Attorney Gladstone next discussed the Planning Board's comments, stating as follows: A proposal for 4 Greenway Court was before the Planning Board in September 2013 whereby the Petitioner requested relief for an additional basement unit and a management office at 4 Greenway Court. Attorney Gladstone stated that the Planning Board was critical of the window wells and the manner in which they were being screened, particularly the one facing Green Street. In response, Petitioner submitted a revised landscape plan to this Board that addresses the Planning Board's concerns. Specifically, the revised plans replace the portions that included

annuals with perennials to address the Planning Board's concern about maintenance issues. The revised plan was also modified to include the pre-existing hedge along Green Street, which in itself will substantially screen the window well.

Attorney Gladstone next discussed the Board of Appeals history with other buildings at Greenway Court. In February 2014, the Board considered the appeal of the owner of 10 and 12 Greenway Court who petitioned for permission to convert the basements of those building into two residential apartments (one in each building), using window wells in the same manner as Petitioner has proposed for the Property in the present case. In those cases (BOA Case No. 2014-0001 and 2014-0004) the Board found that the owner of 10 and 12 Greenway Court met the grounds for a variance from open space requirements and, thus, voted to grant the requested relief. Attorney Gladstone also explained that the building at 9 Greenway Court was permitted to convert its basement into two apartments in 2006. Those buildings (9, 10 and 12 Greenway Court) are situated on the lot in such a way so as to have many more opportunities to provide parking spaces on site than are available to the Property.

Attorney Gladstone next discussed the zoning relief required from the Board of Appeals. Attorney Gladstone stated that the proposal for the basement unit triggers dimensional relief for the front and side yard setback. Attorney Gladstone stated that the setbacks are all pre-existing, non-conforming and although Petitioner is creating a basement unit, the unit will not increase the non-conformity. Attorney Gladstone stated that under **Section 5.43** of the Zoning By-Law and **Section 5.05** of the Zoning By-Law, the Board may waive setback requirements if the applicant provides counterbalancing amenities, which is being provided by enhanced landscaping amenities surrounding the proposed window wells.

Next, Attorney Gladstone discussed relief pursuant to **Article 6** of the Zoning By-Laws. Attorney Gladstone explained that the Property currently contains 6 residential units, 5 of which contain 3 bedrooms and 1 of which contains 2 bedrooms. 5 of the units require 2.3 parking spaces each for a total of 11.5, which rounds to 12. The sixth unit requires another two spaces total of 14. The proposed unit has two bedrooms, which triggers a requirement for an additional 2 parking spaces. The building is currently serviced, as it always has been, by 4 undersized parking spaces (3 if the more typical measurement of 20' long is used). Mr. Gladstone made three arguments for relief from the parking requirements.

Attorney Gladstone discussed the application of **Section 6.01.2** of the Zoning By-Law to this case. He explained that, pursuant to **Section 6.01.2** of the Zoning By-Law, the total additional parking requirements for the building are only applicable if the alteration of the building increases the parking requirements by 15% or more. The property under current zoning requires 14 parking spaces, 15% of which would be 2.1 spaces. Mr. Gladstone asserted that the proposed two bedroom addition triggers a requirement of 2.0 parking spaces, which is less than a 15% increase and, as a consequence, no relief is needed for parking.

Zoning Board of Appeals Member Jonathan Book stated that Mr. Gladstone's interpretation of the Section of the By-Law is not correct but that the By-Law does provide for a possible reduction in required parking for the entire building needed to and that the two spaces triggered by the addition of the two bedroom unit must be provided.

Attorney Gladstone next argued that, if parking relief was required, then pursuant to **Section 6.01.2.a** of the Zoning By-Law in an M-2.0 District the Board of Appeals was empowered to waive up to half of the parking requirement by special permit.

Zoning Board of Appeals Member Jonathan Book stated that this would then permit the waiver of one parking space, which still left the requirement for the provision of an additional parking space.

Attorney Gladstone then argued that no parking relief was necessary because **Section 6.04.10** of the Zoning By-Law provides that for parking lots in existence prior to 1962, none of the provisions of **Article 6** of the Zoning By-Law apply as long as the parking lot is not being expanded. Attorney Gladstone reasoned that in other parts of the **Article 6** of the Zoning By-Laws (e.g. **Section 6.04.10**, second clause and **Section 6.04.11**), the language refers to “regulations of this section.” In contrast, **Section 6.04.10** provides that “The *preceding regulations* shall not apply to parking lots built and in use before July 27, 1962 ...”. By using the term “preceding regulation” as opposed to “regulations of this section”, Attorney Gladstone argued that this grandfathering clause exempts projects such as the petitioner’s from having to meet any of the requirements of **Article 6** of the Zoning By-Law.

Zoning Board of Appeals Member Jonathan Book and Chairman Jesse Geller expressed their belief that this interpretation of the Section is not correct.

Attorney Gladstone then presented his argument that the requirements of a variance under M.G.L. c. 40A Section 10 have been met in this case. Mr. Gladstone stated that the shape of the lot and the building and its relationship to the other lots that make up this uniquely segmented complex constitutes sufficiently unique qualities to be eligible for a variance. Because of the way the other lots take up space at Greenway Court, only 4 Greenway Court has no space to add additional parking. Attorney Gladstone then argued that there was sufficient hardship alleged as the Property is the only one in the development that does not already have a basement apartment (3 Greenway Court already has a pre-existing unit and 9 Greenway Court was allowed to build

two apartments in 2006) or an approval for the construction of such a unit (10 and 12 Greenway Court) and Petitioner will be at a substantial disadvantage being the only one not able to offer a lower rent garden level apartment option.

Attorney Gladstone further pointed out that, not only would this proposal be without substantial detriment to the public good or derogate from the intent or purpose of the By-Law; but, to the contrary, this proposal is in furtherance of those things. **Section 1.00.2** of the Zoning By-Law provides that, the interpretation and application the provisions of this By-law shall be held to be the minimum requirements adopted for the promotion of these [**Section 1.00.1**] purposes. In other words, Mr. Gladstone noted, the least restrictive interpretation should be given in order to accomplish the stated purposes. In this case, he said, the applicable stated purposes of the By-Law are a) encouraging the most appropriate use of land, c) conserving the value of land and buildings, d) lessening congestion of traffic, h) assisting in the economical provision of transportation ... k) and encouraging housing opportunities for people of all income levels. Nowhere in the **Section 1.00.1** stated purposes is “adequate parking for each residence” listed. To the contrary, in a multi-modal rich area as Coolidge Corner (T, bike lanes, nearby Zipcar, Hubway, and over 80 currently available public overnight parking in Town lots on the same block), where the Property is situated, creating fewer parking spaces is much more conducive to the stated goals of the By-Law than is the requirement of unnecessary parking spaces.

In his written remarks, Attorney Gladstone discussed relief under **Section 8.02.2** of the Zoning By-Law, where a special permit is required under **Section 9.05** of the Zoning By-Law to alter and/or extend a non-conforming structure. As for said **Section 9.05**, the standards have been met:

a. The site is an appropriate location for such a use, structure, or condition: This is already a residential building and the similarly situated buildings have or are about to have similar basement apartments.

b. The proposed use will not adversely affect the neighborhood. The use is consistent with the multi-unit housing along the entire street. In fact, if the relief is granted, there will be no impact on the neighborhood as there will not be any additional cars added to the street. The only exterior changes will be the installation of window wells, which will compliment and match the condition already existing at No. 9 Greenway Court.

c. There will be no nuisance or serious hazard to vehicles or pedestrians since, if the relief is granted, the amount of parked cars will not change. There is no change being proposed to the manner in which the cars access and exit the parking spaces already in existence.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The new unit will be built in accordance with all building code requirements. As for parking, the existing facilities will not change.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Zoning Board of Appeals Chairman Geller asked Attorney Gladstone if the petitioner was planning to have the basement unit certified as affordable housing with the attendant restrictions. Attorney Gladstone responded that the Petitioner did not have such plans but that the market would drive a lower price for a below-ground unit.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application.

Zoning Board of Appeals Chairman Geller called upon Timothy Richard, Planner for the Town of Brookline, to deliver the findings of the Planning Board:

FINDINGS

Section 5.05 — Conversions

Section 5.09.2.d — Design Review, Multiple Dwellings

Section 5.43 Exceptions to Yard and Setback Regulations

Section 5.50 — Front Yard Requirements

Section 5.60 — Side Yard Requirements

Section 5.70 — Rear Yard Requirements

Section 6.01.2.a — General Regulations Applying to Off-Street Parking Facilities

Section 6.02: paragraph 1: — Table of Off Street Parking Requirements

Section 6.04.5.b — Design of All-Off Street Parking Facilities

Section 6.04.3 — Design of All Off-Street Parking Facilities

Section 6.04.7 — Design of All Off-Street Parking Facilities

M-2.0 District	Required/Allowed	Existing	Proposed	Finding
Front Yard	15'	10.1' (Existing Nonconforming)	10.1' (Existing NonConforming)	S.P **
Side Yard	10' + L/10	12.2' (Existing Nonconforming)	12.2' (Existing Nonconforming)	S.P.**
Rear Yard	30'	0' (Existing Nonconforming)	0' (Existing Nonconforming)	S.P.**
Parking Space	14	4	3	S.P.***Variance

** Under Section 5.05 the Board of Appeals may waive dimensional requirements provided that existing non-conformity is not increased or under Section 5.43, a special permit of counterbalancing amenities are provided

*** Under Section 6.01.2.a the Board of Appeals may waive up to half of the parking requirements.

Section 8.02.1 — Alteration or Extension (Structure) — A special permit is required to alter, extend or enlarge a non-conforming structure.

Section 8.02.2 — Alteration or Extension — A variance is required to enhance a nonconforming condition (parking)

PLANNING BOARD COMMENTS

Mr. Richard reported that the Planning Board was not in favor of granting relief for the basement unit proposal. Mr. Richard stated that, nonetheless, should the Board of Appeals find that the statutory requirements for a variance for parking are met, the Planning Board

recommended implementation of the following conditions based on the plans by David L King Architects dated June 4, 2014 and the modified landscape plan dated September 29, 2014:

1. Prior to issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final site plan showing all approved parking spaces and final building elevation plans shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision:
 - 1) a final site plan, stamped and signed by a registered land surveyor or engineer;
 - 2) final building elevations, stamped and signed by a registered architect;
 - 3) a final landscaping plan, stamped and signed by a registered landscape architect;
 - and 4) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Chief Building Inspector Yanovitch stated that he disagreed with Attorney Gladstone's assertions that no parking relief was necessary pursuant to **Sections 6.01.2 or 6.04.10** of the Zoning By-Laws and that Mr. Gladstone's interpretations are not consistent with the Building Department application of the provisions of the parking By-Law in the past. Mr. Yanovitch noted that similar Greenway Court proposals were granted variances in the past.

In deliberations, Zoning Board of Appeals Member Christopher Hussey stated that he was in support of the relief requested.

Zoning Board of Appeals Member Jonathan Book stated his belief that there was sufficient evidence in support of granting a variance in this case Mr. Book also noted that there was no need for additional parking in this part of the Town.

Zoning Board of Appeals Chairman Jesse Geller clarified that an argument for a variance based on the size of the lot did not in and of itself warrant a variance since M.G.L. Chapter 40A, Section 10 refers specifically to soil, shape and topography. Zoning Board of Appeals Member Jonathan Book responded that this case met the requirements under M.G.L. c. 40A, Section 10 due to the unique relationship this lot has to the other lots that are part of the same constellation of buildings on Greenway Court. Zoning Board of Appeals Chairman Jesse Geller stated that the argument for uniqueness was very thin, but in the end made the determination that it was adequate to meet the requirements for a variance.

The Board of Appeals then determined by unanimous vote that the requirements for a variance from application of the provisions of Section 6.02, paragraph 1 of the Zoning By-Law and Special Permits from Sections 5.05, 5.09.2.d, 5.60, 5.70, 6.04.5.b, 6.04.3, and 6.04.7 of the Zoning By-Law pursuant to Sections. 5.43, 6.01.2.a and 9.05 of the Zoning By-Law have been met. The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site in an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board of Appeals voted unanimously to grant the foregoing requested relief subject to the following conditions:

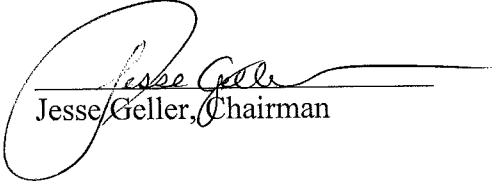
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3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final building elevations, stamped and signed by a registered architect; 3) a final landscaping plan, stamped and signed by a registered landscape architect; and 4) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

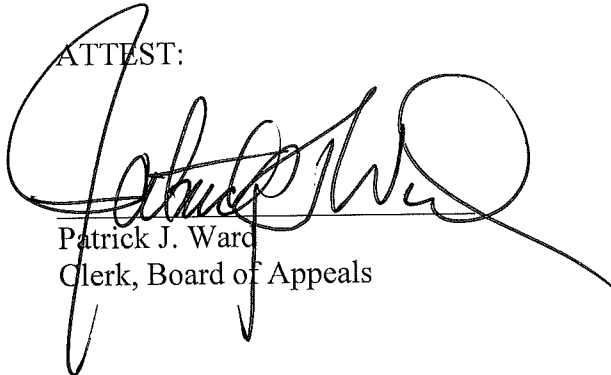
Unanimous Decision of
The Board of Appeals

Filing Date: 10/30/14


Jesse Geller, Chairman

A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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